



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0282]

RIN 1625-AA00

Safety Zone; Sunken Vessel, Puget Sound, Everett, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a safety zone around the Vigor Marine Dry Dock, located in Everett, WA. This action is necessary to prevent maritime traffic from colliding with a sunken dry dock and associated debris, and to ensure the safety of the salvage crews on scene. It will do so by prohibiting vessels from entering or remaining in the safety zone unless authorized by the Captain of the Port or his Designated Representative.

DATES: This rule is effective in the CFR on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m. on April 15, 2012. This rule is effective with actual notice for purposes of enforcement at 12:00 a.m. on April 2, 2012. This rule will remain in effect through 11:59 p.m. on April 15, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0282 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0282 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail ENS Nathaniel P. Clinger, Waterways Management Division, Coast Guard Sector Puget Sound; Coast Guard; telephone 206-217-6045 e-mail SectorPugetSoundWWM@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision

authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing a NPRM would be contrary to public interest since immediate action is necessary to protect vessels, persons, and salvage crews in Everett, WA, from hazards created by a sunken dry dock requiring emergency salvage operations. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Normal notice and comment procedures cannot be followed due to the immediate threat of collision and/or exposure to hazardous pollutants posed by the sunken vessel and associated pollution response and salvage operations.

Background and Purpose

On March 18, 2012 at approximately 12:46 p.m. the floating dry dock in which the 136 foot TUG INVADER was laying on blocks was found to have capsized and partially sank. As a result the Coast Guard established a 100 yard safety zone around the Vigor Marine Dry Dock in Everett, WA. On March

22, 2012 it was determined that a hard containment boom must be tied to the existing long log boom in place, which is outside of the original established safety zone. Due to these operational requirements this rule establishes a 200 yard safety zone surrounding the dry dock. As salvage operations continue to recover the floating dry dock, salvage equipment, which may include cranes and vessels utilizing dive teams that will require this zone to ensure safety. Enforcement of this zone will commence at 12:00 a.m. on April 02, 2012. The safety zone created by this rule is necessary to help ensure the safety of maritime public and the personnel involved in salvage operations. It prevents navigation in areas that may contain sunken obstructions, and debris.

Discussion of Rule

The Coast Guard is establishing a safety zone encompassing all waters within 200 yards of Vigor Marine Dry Dock in Everett, WA. Vessels wishing to enter the zone must request permission for entry by contacting the Joint Harbor Operation Center at (206) 217-6001 or Vessel Traffic Service Puget Sound on VHF-FM CH 14. Once permission for entry is granted vessels must proceed at a minimum speed for safe navigation.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866. This rule is not a significant regulatory action due to being limited in size and duration.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators vessels intending to transit the affected waterway during the period mentioned. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason. The zone established in this rule is limited in size and short in duration.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects

of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately

affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant

effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under ADDRESSES.

List of Subjects 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record Keeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add a temporary § 165.T13-213 to read as follows:

§ 165.T13-213 Safety Zone; Sunken Vessel, Puget Sound, Everett, WA.

(a) Location: The following area is designated as a safety zone: All waters within 200 yards of the Vigor Marine Dry Dock in Everett, WA.

(b) Regulations: In accordance with the general regulations in 33 CFR 165, Subpart C, vessels wishing to enter the zone must request permission for entry by contacting the Joint Harbor Operation Center at (206) 217-6001 or Vessel Traffic Service Puget Sound on VHF-FM CH 14. Once permission for entry is granted vessels must proceed at a minimum speed for safe navigation.

(c) Effective Dates and Enforcement Periods: This rule will be effective and enforced from 12:00 a.m. on April 2, 2012 through 11:59 p.m. on April 15, 2012, unless cancelled sooner by the Captain of the Port.

DATED: March 30, 2012.

S. J. Ferguson
Captain, U.S. Coast Guard
Captain of the Port, Puget Sound

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